

AMENDED IN ASSEMBLY AUGUST 7, 2000

AMENDED IN ASSEMBLY JUNE 22, 2000

AMENDED IN SENATE MARCH 30, 2000

SENATE BILL

No. 1960

**Introduced by Senators Burton, Hughes, Karnette,
O'Connell, and Ortiz**

(Coauthors: Assembly Members Havice, Hertzberg,
Lempert, Machado, Migden, Steinberg, Villaraigosa, and
Washington)

February 25, 2000

An act to amend Sections 3540.1, 3543, and 3583.5 of, and to repeal and add Section 3546 of, the Government Code, relating to public school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1960, as amended, Burton. Public school employee labor relations.

(1) Under existing law, public school employees have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Pursuant to that existing law, public school employees also may enter into an organizational security arrangement under which they either have the right to refuse to join or participate in the activities of employee organizations or the right to join the recognized employee organization or pay the organization a service fee. Existing law, subject to certain limitations, provides that

organizational security is within the scope of representation and defines “organizational security” in accordance with those rights. Existing law provides that an organizational security arrangement, to be effective, must be agreed upon by both parties to the agreement, and authorizes the public employer, when the issue is being negotiated, to require that the organizational security arrangement be severed from the remainder of the proposed agreement and cause that arrangement to be voted upon separately by all members in the appropriate negotiating unit.

This bill would delete those provisions pertaining to the effectiveness of the organizational security arrangement. The bill would instead require public school employees who are in a unit for which an exclusive representative has been selected to be required, as a condition of continued employment, either to join the recognized employee organization or to pay the organization a fair share service fee, and would make conforming changes in related provisions.

The bill would establish a procedure for employees to petition for the rescission or reinstatement of this form of arrangement, would provide that the cost of conducting the rescission election would be borne by the Public Employment Relations Board and that the cost of a reinstatement election would be borne by the petitioning party, and would require the election for reinstatement to be conducted at the worksite by secret ballot.

The bill would also provide that if the arrangement is rescinded, employees could choose to negotiate either of the 2 forms of organizational security permitted under existing law. The bill would require the employer to remain neutral in an election to rescind that arrangement and would prohibit the employer from participating in any such election conducted under those provisions unless required to do so by the Public Employee Labor Relations Board. By requiring the employer to participate in the election if required to do so by the board, the bill would impose a state-mandated local program.

(2) Existing law requires employees of the California State University and employees of the University of California, other than faculty of the University of California who are



eligible for membership in the Academic Senate, to either join the employee organization or to pay the organization a fair share service fee. Existing law establishes a procedure for employees to petition for rescission or reinstatement of this form of organizational security, and provides that the cost of conducting an election to rescind or reinstate that organizational security arrangement be borne by the petitioning party.

This bill would instead require the Public Employment Relations Board to bear the cost of conducting an election to rescind that arrangement.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3540.1 of the Government Code
2 is amended to read:
3 3540.1. As used in this chapter:
4 (a) "Board" means the Public Employment Relations
5 Board created pursuant to Section 3541.
6 (b) "Certified organization" or "certified employee
7 organization" means an organization which has been
8 certified by the board as the exclusive representative of
9 the public school employees in an appropriate unit after
10 a proceeding under Article 5 (commencing with Section
11 3544).
12 (c) "Confidential employee" means any employee
13 who, in the regular course of his or her duties, has access

1 to, or possesses information relating to, his or her
2 employer's employer-employee relations.

3 (d) "Employee organization" means any organization
4 which includes employees of a public school employer
5 and which has as one of its primary purposes representing
6 those employees in their relations with that public school
7 employer. "Employee organization" shall also include
8 any person such an organization authorizes to act on its
9 behalf.

10 (e) "Exclusive representative" means the employee
11 organization recognized or certified as the exclusive
12 negotiating representative of certificated or classified
13 employees in an appropriate unit of a public school
14 employer.

15 (f) "Impasse" means that the parties to a dispute over
16 matters within the scope of representation have reached
17 a point in meeting and negotiating at which their
18 differences in positions are so substantial or prolonged
19 that future meetings would be futile.

20 (g) "Management employee" means any employee in
21 a position having significant responsibilities for
22 formulating district policies or administering district
23 programs. Management positions shall be designated by
24 the public school employer subject to review by the
25 Public Employment Relations Board.

26 (h) "Meeting and negotiating" means meeting,
27 conferring, negotiating, and discussing by the exclusive
28 representative and the public school employer in a good
29 faith effort to reach agreement on matters within the
30 scope of representation and the execution, if requested by
31 either party, of a written document incorporating any
32 agreements reached, which document shall, when
33 accepted by the exclusive representative and the public
34 school employer, become binding upon both parties and,
35 notwithstanding Section 3543.7, shall not be subject to
36 subdivision 2 of Section 1667 of the Civil Code. The
37 agreement may be for a period of not to exceed three
38 years.

39 (i) "Organizational security" is within the scope of
40 representation, and means either of the following:



1 (1) An arrangement pursuant to which a public school
2 employee may decide whether or not to join an employee
3 organization, but which requires him or her, as a
4 condition of continued employment, if he or she does join,
5 to maintain his or her membership in good standing for
6 the duration of the written agreement. However, no such
7 arrangement shall deprive the employee of the right to
8 terminate his or her obligation to the employee
9 organization within a period of 30 days following the
10 expiration of a written agreement.

11 (2) An arrangement that requires an employee, as a
12 condition of continued employment, either to join the
13 recognized or certified employee organization, or to pay
14 the organization a service fee in an amount not to exceed
15 the standard initiation fee, periodic dues, and general
16 assessments of the organization for the duration of the
17 agreement, or a period of three years from the effective
18 date of the agreement, whichever comes first.

19 (j) “Public school employee” or “employee” means
20 any person employed by any public school employer
21 except persons elected by popular vote, persons
22 appointed by the Governor of this state, management
23 employees, and confidential employees.

24 (k) “Public school employer” or “employer” means
25 the governing board of a school district, a school district,
26 a county board of education, a county superintendent of
27 schools, or a charter school that has declared itself a public
28 school employer pursuant to subdivision (b) of Section
29 47611.5 of the Education Code.

30 (l) “Recognized organization” or “recognized
31 employee organization” means an employee
32 organization which has been recognized by an employer
33 as the exclusive representative pursuant to Article 5
34 (commencing with Section 3544).

35 (m) “Supervisory employee” means any employee,
36 regardless of job description, having authority in the
37 interest of the employer to hire, transfer, suspend, lay off,
38 recall, promote, discharge, assign, reward, or discipline
39 other employees, or the responsibility to assign work to
40 and direct them, or to adjust their grievances, or

1 effectively recommend such action, if, in connection with
2 the foregoing functions, the exercise of that authority is
3 not of a merely routine or clerical nature, but requires the
4 use of independent judgment.

5 SEC. 2. Section 3543 of the Government Code is
6 amended to read:

7 3543. (a) Public school employees shall have the
8 right to form, join, and participate in the activities of
9 employee organizations of their own choosing for the
10 purpose of representation on all matters of
11 employer-employee relations. Public school employees
12 who are in a unit for which an exclusive representative
13 has been selected, shall be required, as a condition of
14 continued employment, to join the recognized employee
15 organization or to pay the organization a fair share
16 services fee, as required by Section 3546. If a majority of
17 the members of a bargaining unit rescind that
18 arrangement, either of the following options shall be
19 applicable:

20 (1) The recognized employee organization may
21 petition for the reinstatement of the arrangement
22 described in subdivision (a) of Section 3546 pursuant to
23 the procedures in paragraph (2) of subdivision (d) of
24 Section 3546.

25 (2) The employees may negotiate either of the two
26 forms of organizational security described in subdivision
27 (i) of Section 3540.1.

28 (b) Any employee may at any time present grievances
29 to his or her employer, and have such grievances
30 adjusted, without the intervention of the exclusive
31 representative, as long as the adjustment is reached prior
32 to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7,
33 and 3548.8 and the adjustment is not inconsistent with the
34 terms of a written agreement then in effect; provided
35 that the public school employer shall not agree to a
36 resolution of the grievance until the exclusive
37 representative has received a copy of the grievance and
38 the proposed resolution and has been given the
39 opportunity to file a response.

1 SEC. 3. Section 3546 of the Government Code is
2 repealed.

3 SEC. 4. Section 3546 is added to the Government
4 Code, to read:

5 3546. (a) Notwithstanding any other provisions of
6 law, any public school employee who is in a unit for which
7 an exclusive representative has been selected pursuant to
8 this chapter shall be required, as a condition of continued
9 employment, either to join the recognized employee
10 organization or to pay the organization a fair share service
11 fee. The amount of the fee shall not exceed the dues that
12 are payable by members of the employee organization,
13 and shall cover the cost of negotiation, contract
14 administration, and other activities of the employee
15 organization that are germane to its functions as the
16 exclusive bargaining representative. Upon notification to
17 the employer by the exclusive representative, the
18 amount of the fee shall be deducted by the employer from
19 the wages or salary of the employee and paid to the
20 employee organization.

21 (b) The costs covered by the fee under this section
22 may include, but shall not necessarily be limited to, the
23 cost of lobbying activities designed to foster collective
24 bargaining negotiations and contract administration, or
25 to secure for the represented employees advantages in
26 wages, hours, and other conditions of employment in
27 addition to those secured through meeting and
28 negotiating with the employer.

29 (c) The arrangement described in subdivision (a)
30 shall remain in effect unless it is rescinded pursuant to
31 subdivision (d). The employer shall remain neutral, and
32 shall not participate in any election conducted under this
33 section unless required to do so by the board.

34 (d) (1) The arrangement described in subdivision (a)
35 may be rescinded by a majority vote of all the employees
36 in the negotiating unit subject to that arrangement, if a
37 request for a vote is supported by a petition containing 30
38 percent of the employees in the negotiating unit, the
39 signatures are obtained in one academic year. There shall
40 not be more than one vote taken during the term of any

1 collective bargaining agreement in effect on or after
2 January 1, 2001.

3 (2) If the arrangement described in subdivision (a) is
4 rescinded pursuant to paragraph (1), a majority of all
5 employees in the negotiating unit may request that the
6 arrangement be reinstated. That request shall be
7 submitted to the board along with a petition containing
8 the signatures of at least 30 percent of the employees in
9 the negotiating unit. The vote shall be conducted at the
10 worksite by secret ballot, and shall be conducted no
11 sooner than one year after the rescission of the
12 arrangement under this subdivision.

13 (3) If the board determines that the appropriate
14 number of signatures have been collected, it shall
15 conduct the vote to rescind or reinstate in a manner that
16 it shall prescribe in accordance with this subdivision.

17 (4) The cost of conducting an election under this
18 subdivision to reinstate the organizational security
19 arrangement shall be borne by the petitioning party and
20 the cost of conducting an election to rescind the
21 arrangement shall be borne by the board.

22 SEC. 5. Section 3583.5 of the Government Code is
23 amended to read:

24 3583.5. (a) (1) Notwithstanding any other provision
25 of law, any employee of the California State University or
26 the University of California, other than faculty of the
27 University of California who are eligible for membership
28 in the Academic Senate, who is in a unit for which an
29 exclusive representative has been selected pursuant to
30 this chapter, shall be required, as a condition of continued
31 employment, either to join the recognized employee
32 organization or to pay the organization a fair share service
33 fee. The amount of the fee shall not exceed the dues that
34 are payable by members of the employee organization,
35 and shall cover the cost of negotiation, contract
36 administration, and other activities of the employee
37 organization that are germane to its functions as the
38 exclusive bargaining representative. Upon notification to
39 the employer by the exclusive representative, the
40 amount of the fee shall be deducted by the employer from

1 the wages or salary of the employee and paid to the
2 employee organization.

3 (2) The costs covered by the fee under this section
4 may include, but shall not necessarily be limited to, the
5 cost of lobbying activities designed to foster collective
6 bargaining negotiations and contract administration, or
7 to secure for the represented employees advantages in
8 wages, hours, and other conditions of employment in
9 addition to those secured through meeting and
10 conferring with the higher education employer.

11 (b) The organizational security arrangement
12 described in subdivision (a) shall remain in effect unless
13 it is rescinded pursuant to subdivision (c). The higher
14 education employer shall remain neutral, and shall not
15 participate in any election conducted under this section
16 unless required to do so by the board.

17 (c) (1) The organizational security arrangement
18 described in subdivision (a) may be rescinded by a
19 majority vote of all the employees in the negotiating unit
20 subject to that arrangement, if a request for a vote is
21 supported by a petition containing the signatures of at
22 least 30 percent of the employees in the negotiating unit,
23 the signatures are obtained in one academic year, ~~and the~~
24 ~~vote is conducted at the worksite by secret ballot.~~ There
25 shall not be more than one vote taken during the term of
26 any memorandum of understanding in effect on or after
27 January 1, 2000.

28 (2) If the organizational security arrangement
29 described in subdivision (a) is rescinded pursuant to
30 paragraph (1), a majority of all the employees in the
31 negotiating unit may request that the arrangement be
32 reinstated. That request shall be submitted to the board
33 along with a petition containing the signatures of at least
34 30 percent of the employees in the negotiating unit. The
35 vote shall be conducted at the worksite by secret ballot,
36 and shall be conducted no sooner than one year after the
37 rescission of the organizational security arrangement
38 under this subdivision.

39 (3) If the board determines that the appropriate
40 number of signatures have been collected, it shall

1 conduct the vote to rescind or reinstate in a manner that
2 it shall prescribe in accordance with this subdivision.

3 (4) The cost of conducting an election under this
4 subdivision to reinstate the organizational security
5 arrangement shall be borne by the petitioning party, and
6 the cost of conducting an election to rescind the
7 arrangement shall be borne by the board.

8 SEC. 6. Notwithstanding Section 17610 of the
9 Government Code, if the Commission on State Mandates
10 determines that this act contains costs mandated by the
11 state, reimbursement to local agencies and school
12 districts for those costs shall be made pursuant to Part 7
13 (commencing with Section 17500) of Division 4 of Title
14 2 of the Government Code. If the statewide cost of the
15 claim for reimbursement does not exceed one million
16 dollars (\$1,000,000), reimbursement shall be made from
17 the State Mandates Claims Fund.

